

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 NINTH STREET, N.W.
SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com

William A. Mullins
william.mullins@troutmansanders.com

ENTERED
Office of Proceedings

FEB 12 2003

Part of
Public Record
Fax: 202-654-2953
202-654-5635

February 12, 2003

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

FD 34282-207225
FD 34283-207226
FD 34310-207227

RECEIVED
FEB 12 2003
MANAGEMENT
STB

RE: Finance Docket No. 33995-207222
*SF&L Railway, Inc. -- Acquisition And Operation Exemption --
Toledo, Peoria & Western Railway Corporation--Between La Harpe and Peoria, IL;*
and
Finance Docket No. 33996-207223
*Kern W. Schumacher and Morris H. Kulmer --
Continuance In Control Exemption--SF&L Railway, Inc.;*
and
STB Docket No. AB-448 (Sub-No. 2X)-207224
*SF&L Railway, Inc. -- Abandonment Exemption --
In Hancock, McDonough, Fulton and Peoria Counties, IL*

Dear Secretary Williams:

Keokuk Junction Railway Co. ("KJRY") hereby opposes lifting the February 6, 2003 restriction against transfer of the La Harpe to Peoria rail line ("La Harpe Line") to Western Illinois Railway Company ("WIRC"), as requested by SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer (collectively, the "A&K Parties"). If the Surface Transportation Board ("Board") lifts that restriction, it would be possible for the A&K Parties to acquire WIRC and thus effectively accomplish the same actions that they have been ordered not to do, *i.e.* acquire ownership of the rail assets of the La Harpe Line. Furthermore, such an action could occur free of further Board supervision.

From what KJRY understands, WIRC appears to be nothing more than a potential convenient means for the A&K Parties to reacquire the La Harpe Line. Thus far, WIRC has obtained an exemption to acquire the track and related materials of the La Harpe Line. Like SF&L, WIRC did not acquire the right-of-way from TP&W. While SF&L temporarily acquired the common carrier obligation on the line, WIRC proposes to leave that with TP&W. *See Western Illinois Railway Company--Acquisition Exemption-Toledo, Peoria & Western Railway Corporation*, Finance Docket No. 34282 (served Dec. 20, 2002).

ATLANTA • HONG KONG • LONDON • NORFOLK • RICHMOND
TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

The Honorable Vernon A. Williams
February 12, 2003
Page 2

On November 26, 2002, RailAmerica, Inc. ("RailAmerica") moved the Board to dismiss WIRC's acquisition exemption, and RailAmerica's related common control exemption. RailAmerica argued that "consummation of the involved transaction will not render the WIRC a common carrier." RailAmerica November 26, 2002 Motion to Dismiss Finance Docket Nos. 34282 and 34283 at 4. If granted, RailAmerica's motion would leave WIRC as the owner of the rail and track materials in the La Harpe Line, but beyond the Board's jurisdiction. Because WIRC would not be a common carrier and would be outside the Board's jurisdiction, RailAmerica would be free to sell WIRC to the A&K Parties without any Board review or approval. Although the common carrier obligation would remain with TP&W and TP&W still would have an obligation to serve the line, A&K would own the assets. It would then be a simple matter for TP&W to adopt the same tactics as SF&L, not provide any service, and then file for abandonment.¹

Only this scenario explains how the A&K Parties and RailAmerica seem to have settled the \$3.0+ million disagreement on the value of the La Harpe Line so quickly. Prior to the Board's January 31 voting conference, SF&L vigorously insisted that the La Harpe Line had a net liquidation value of \$5.7 million, while TP&W insisted that it would not pay more to reacquire the line than the original selling price of approximately \$2.2 million, plus interest. SF&L and TP&W apparently were locked in these positions from October 2002 through January 2003.

Now, a mere dozen days later, SF&L puts on the appearance that its \$3.0 million disagreement with TP&W has vanished and has even dismissed its appeal. Even more curious is the fact that you now have SF&L, with TP&W's concurrence, requesting that RailAmerica be immediately released from the restrictions on transferring the line that the Board imposed in its February 6, 2003 order. What has occurred? Have SF&L and Rail America reached an agreement for WIRC to be sold to the A&K Parties? Are these parties simply trying to accomplish by other means what the Board has told them not to accomplish? Would the A&K Parties hold onto the La Harpe Line for another few months, while RailAmerica processes an abandonment exemption, in order to gain their anticipated \$3.0 million prize? Certainly they would. Likewise, if WIRC were outside the Board's jurisdiction, the agency's ability to compel the transfer of the La Harpe Line or access to that line at fair terms to a potential offer of

¹ This is not a far fetched scenario as TP&W has indicated for months that it does not believe that the line can be operated profitably, although KJRY disagrees with that proposition. Indeed, TP&W sought to be substituted as the exemption petitioner in SF&L's abandonment exemption petition and one should not be surprised if TP&W files for abandonment authorization shortly. In the meantime, unless the emergency service order in Finance Docket No. 34310 is granted, the shippers and communities along the line will continue to suffer from lack of rail service, despite the fact that KJRY is willing and able to provide such service.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

The Honorable Vernon A. Williams
February 12, 2003
Page 3

financial assistance purchaser could be, at best, severely limited.² Until these questions are answered and the public given an opportunity to provide comment and input, the Board should not lift the restriction preventing transfer of the La Harpe Line to WIRC.

A copy of this letter is also being filed for the record in Finance Docket Nos. 34282, 34283, and 34310 and I hereby certify that a copy of this letter is being served upon all parties in the captioned proceedings as well as on those participating in Finance Docket Nos. 34282, 34283 and 34310 by first class mail or by more expeditious means, concurrently with the filing of this letter with the Board.

Please feel free to contact me if you have any questions.

Sincerely yours,



William A. Mullins

cc: All parties of record
Finance Docket Nos. 34282, 34283 and 34310

² While RailAmerica represented that TP&W would retain the ability to force the sale of the line, *see* RailAmerica November 26, 2002 Motion to Dismiss at n.1, it also represented that there was no written agreement covering RailAmerica's control of WIRC. Finance Docket No. 34283 Notice of Exemption at 5. Furthermore, even assuming TP&W retains the common carrier obligation, there are substantial legal and practical questions surrounding the use of the Section 10904 statutory procedures to acquire a common carrier right from a carrier who does not own the underlying assets utilized to carry out that common carrier obligation.